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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF OREGON

9 In re the Application of:

O R D E R  
Civ. No. 07-1618-AA

10 TAMMY ELLEN WILLING,

11 Petitioner,

12 vs.

13 TREVOR PURTILL,

14 Respondent.  
15

AIKEN, Judge:

16 Pursuant to Fed. R. Civ. P. 54, petitioner moves for an  
17 award of attorney fees and costs. Respondent is unrepresented in  
18 this action and has not filed any opposition to the motion.  
19 Petitioner's motion is granted in the amount of \$28,669.65 for  
20 attorney fees, \$10,052.30 for costs, for a total award of  
21 \$38,721.95.

22 DISCUSSION

23 Petitioner brought this petition for return of her children  
24 to Australia under the Hague Convention on the Civil Aspects of  
25 International Child Abduction, and its implementing legislation,  
26 the International Child Abduction Remedies Act (ICARA). 42  
27 U.S.C. §§ 11601 et seq. After a one day bench trial, this court  
28

1 granted the petition and ordered the return of the children to  
2 their "habitual residence" (Australia).

3 Petitioner now moves for attorney fees and costs. The court  
4 notes that ICARA requires any court ordering the return of a  
5 child under the Hague Convention to award fees and costs to the  
6 successful party unless such order would be "clearly  
7 inappropriate." 42 U.S.C. § 11607(b)(3). The statute holds, in  
8 part:

9 (b) Costs incurred in civil actions

10 \* \* \*

11 (3) Any court ordering the return of a child pursuant to  
12 an action brought under section 11603 of this title shall  
13 order the respondent to pay necessary expenses incurred  
14 by or on behalf of the petitioner, including court costs,  
15 legal fees, foster home or other care during the course  
of the proceedings in the action, and transportation  
costs related to the return of the child, unless the  
respondent establishes that such an order would be clearly  
inappropriate.

16 Id.

17 The purpose of this requirement is to restore the petitioner  
18 to the financial position she would have been in had there been  
19 no removal and to deter such conduct from happening in the first  
20 place. See Convention Text and Legal Analysis, 51 Fed.Reg.  
21 10494, 10511 (Mar. 26, 1986).

22 Petitioner incurred a total of \$10,052.30 in expenses  
23 related to the return of the children. Those costs include  
24 postage/deliver services, photocopies, faxes, court reporter  
25 fees, computer research, investigation service fees, emergency  
26 passports, excess luggage (for the children), meals, attorney  
27 lodging costs, Australian domestic flights, international  
28 flights, and client lodging. The court awards petitioner the

1 full amount of her expenses finding they were both necessary and  
2 reasonable. See 42 U.S.C. § 11067(b)(3), and Fed. R. Civ. P. 54.  
3 Therefore, costs in the amount of \$10,052.30 are awarded to  
4 petitioner.

5 Petitioner also requests a total of \$33,729 in attorney  
6 fees. That amount includes the services of four lawyers and one  
7 legal assistant ranging in hourly rates from \$75 to \$300 per  
8 hour, for a total of 121 hours. Due primarily to respondent's  
9 financial circumstances, particularly his unemployment, and the  
10 fact petitioner will be reimbursed all of her expenses, the court  
11 finds the request for attorney fees somewhat excessive. Courts  
12 have discretion to reduce any potential award to allow for the  
13 financial condition of the respondent. See Rydder v. Rydder, 49  
14 F.3d 373-74 (8<sup>th</sup> Cir. 1995). Further, the court believes a fee  
15 award which unduly limits respondent's ability to support his  
16 children would be "clearly inappropriate." Consequently, the  
17 court reduces petitioner's attorney fee request by 15% resulting  
18 in a fee award of \$28,669.65. See Rydder, 49 F.3d at 374  
19 (reducing fee award from \$18,487 to \$10,000 due to respondent's  
20 "straitened financial circumstances"); In re Application of  
21 Hirts, 2004 WL 1588227 at \*1 n.1 (E.D. Pa. 2004) (reducing  
22 requested fee award from \$31,958 to \$20,000); and Cook v. Cook,  
23 2007 WL 3120122 (D. Ariz. 2007) (reducing requested fee award from  
24 \$24,187 to \$15,000 as "more equitable."). The court will not  
25 reduce the fee request beyond 15% in recognition of the legal  
26 complexity and logistical difficulty provided by these types of  
27 cases generally, and this case in particular. The court further  
28 finds that an award of \$28,669.65 is sufficient to deter future

1 violations of the Convention.

2 CONCLUSION

3 Petitioner's Motion for Attorney Fees and Costs (doc. 44) is  
4 granted in the amount of \$28,669.65 in attorney fees, and  
5 \$10,052.30 in costs, for a total award of \$38,721.95.

6 IT IS SO ORDERED.

7 Dated this 31 day of January 2008.

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11 Ann Aiken  
12 Ann Aiken  
13 United States District Judge  
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